

United States District Court, Northern District of Illinois

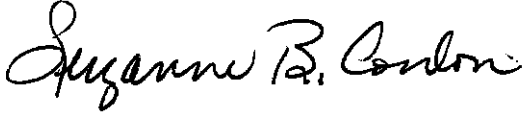
Name of Assigned Judge or Magistrate Judge	Suzanne B. Conlon	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 892	DATE	12/17/2002
CASE TITLE	UNITED STATES vs. ENAAM M. ARNAOUT		


[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Defendant's motion to dismiss portions of Counts One and Two [42-1] is denied. ENTER MEMORANDUM OPINION AND ORDER.
		
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices mailed by judge's staff. <input checked="" type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	CB	courtroom deputy's initials	18000 10121510'S U.S. DISTRICT COURT CLERK 48:5 W 11 330 20 02 DEC 17 PM 5:34 01 03 03714 Date/time received in central Clerk's Office	number of notices	Document Number 67
				DEC 18 2002 date docketed	
				 docketing/deputy initials	
				12/17/2002 date mailed notice	
				PW mailing deputy initials	

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those benefits in a conspiracy to kill, kidnap, maim or injure persons in a foreign country, in violation of 18 U.S.C. §§ 956(a)(1) and 2339A.

Arnaout is charged in Count Two with conspiring to provide material support and resources to *al Qaeda*, *Hezb e Islami*, and others engaged in violent confrontations in Bosnia-Herzegovina, Chechnya, and neighboring regions. He allegedly conspired to conceal and disguise the nature, location, source and ownership of material support and resources he furnished, knowing and intending this aid would be used in a conspiracy to kill, kidnap, maim or injure persons in a foreign country, in violation of 18 U.S.C. §§ 956(a)(1) and 2339A.

The foregoing portions of Count One, and Count Two in its entirety, are the subject of Arnaout's motion to dismiss.² Arnaout contends alleged recipients of BIF aid in Chechnya and Bosnia-Hertzegovina were lawful combatants [or soldiers], whose actions during armed conflict with legitimate military targets are privileged from prosecution under the Geneva Conventions. According to Arnaout, the status of purported BIF beneficiaries as lawful combatants protects them from prosecution for acts of war, such as killing, maiming, kidnaping and injuring the enemy. Because BIF aid recipients' conduct during war was not unlawful under the Geneva Conventions, Arnaout argues their lawful conduct cannot support charges of conspiracy to murder, kidnap and maim under 18 U.S.C. § 956(a)(1). He concludes that as a matter of law, the government cannot establish that material support was provided to groups or persons engaged in violent conflicts within the purview of 18 U.S.C. § 2339A.

Arnaout ignores the court's obligation to accept all well-pleaded allegations of the indictment as true for purposes of a motion to dismiss. *Boyce Motor Lines v. United States*, 342 U.S. 337, 343

² In addition, Arnaout is charged with the substantive offenses of money laundering, mail fraud and wire fraud.

n.16 (1951). Applying that standard, allegations that Arnaout conspired to provide material support and resources to *al Qaeda*, *Hezb e Islami*, and others engaged in violent confrontations must be viewed as true. The allegations of the indictment support a reasonable inference that the intended recipients of BIF aid were terrorists who do not fall under the protection of the Geneva Conventions.

Nor has Arnaout established that *al Qaeda* and *Hezb e Islami* were lawful combatants privileged against prosecution for conspiracy to murder, kidnap, maim and injure others in Chechnya and Bosnia-Herzegovina. Arnaout has made no showing whatsoever that *al Qaeda* and *Hezb e Islami* meet the criteria for lawful combatant status: (1) hierarchical military structure; (2) distinctive military uniforms or emblems recognizable at a distance; (3) combatants carry arms openly; and (4) operations are conducted in accordance with the laws and customs of war. *United States v. Lindh*, 212 F.Supp.2d 541, 557 (E.D.Va. 2002) (citing, *inter alia*, Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135, art. 4(A)(2)). “[A]ll armed forces or militias, regular and irregular, must meet the four criteria if their members are to receive combatant immunity.” *Id.* at 557 n. 35.


CONCLUSION

Viewing the allegations of the indictment as true, Counts One and Two sufficiently allege that Arnaout conspired to supply material support and benefits to *al Qaeda* and *Hezb e Islami*, and others engaged in violent confrontations involving murder, kidnaping, maiming and injury in Chechnya and Bosnia-Herzegovina, and neighboring regions, in violation of federal law. Arnaout

has failed to establish as a matter of law that the lawful combatant privilege extends to alleged recipients of his aid.

December 17, 2002

ENTER:


Suzanne B. Conlon
United States District Judge